HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.2609 of 1982
Date of decision : 2.5.2007

Sewa Singh and others **.....Appellants**

versus

Union of India and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.K.S.Dadwal, Advocate for the appellants.
Mr.G.S.Jaswal, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

The plaintiff are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for possession of the land measuring 4K-2M situated in village Shergarh was dismissed.

It is the case of the plaintiffs that they are the owners of the suit land and the adverse entries in the revenue record showing the plaintiffs as mortgagors and the Central Government as mortgagee, has no effect on their title. The land measuring 8K-10M bearing Khasra No.750 (old) was mortgaged on 2.6.1892 by Narain Singh, Harnam Singh and Acchar Singh sons of Nihal Singh and Dalipa minor son of Thakur Singh adopted son of Harnam Singh, in favour of Prabh Dayal son of Chand Rai and Kanaiya Lal son of Shiv Dayal Bhambra, for a sum of Rs.800/- through a registered mortgage deed. On 13.6.1899, the mortgage rights were sold to Mammoo and Kutba sons of Pira Jat, through a registered

sale deed. The mutation of the said transfer of mortgage rights was sanctioned on 4.6.1900, but the land mortgaged was shown to be inclusive of shamlat share, though in fact no share in the shamlat was transferred. It is further pointed out that during the year 1899, the shamlat land was divided in the village amongst the land holders and the Kura No.52 was allotted to the mortgagees in view of the entries in the revenue record. Khasra No.1/16 came into existence in lieu of the old number which was reflected as mortgaged.

On an application filed by Dalip Singh, predecessor-in-interest of the plaintiffs, the Collector, Hoshiarpur passed an order of redemption on 3.8.1943 on payment of Rs.44/8/- in terms of the provisions of *The Punjab Restitution of Mortgaged Lands Act, 1938.* It is further the case of the plaintiffs that on payment of said mortgage amount, the possession was taken by Dalip Singh on 15.10.1943. The plaintiff, as grand-son of Dalip Singh, entered into possession of the property in dispute. But due to mistake of the Patwari, the property was not mutated in the name of the Mortgagor, but continued to be in the name of the Muslim Mortgagees. In view of the said mistake in the revenue record, the property was declared evacuee property. It was also pointed out that the said property has been allotted to defendant Nos.2 to 4 by Custodian being evacuee property. Such allotment is illegal, void and unauthorized as the same could not have been declared as evacuee property as the land was redeemed in the year 1943, much prior to partition of the country.

Both the Courts below have dismissed the suit. The learned First Appellate Court has found that though the order of restitution has been passed by the Collector on 3.8.1943, Exhibit P-14, but the same was

never acted upon by making the necessary payment of Rs.44/8/-. It was held that there is no evidence on record that the payment was made and the land was redeemed. The learned First Appellate Court has also held that Mohammedans were shown as mortgagees of the property in dispute and they continued to be so shown in the revenue record for the period of about 50 years before they left the country after partition and no efforts were made by the plaintiffs to get rectification of the entries made wherein the Mohammedans were shown as mortgagees wrongly. The possession of the mortgagees shown in the revenue record for a period of more than 12 years ripened in law into ownership. Thus, the learned First Appellate Court affirmed the findings of the learned trial Court that the land in dispute actually stood mortgaged and the mortgage was never redeemed and the entries regarding the mortgage cannot be said to be incorrect. The learned First Appellate Court further returned a finding that the Civil Court cannot entertain any suit or adjudicate upon any question whether a particular property or right to or interest therein is or is not evacuee property.

I have heard the learned counsel for the parties on the following substantial questions of law:-

(i) Whether the findings recorded by the learned First Appellate Court that the mortgage was not redeemed, is based on misreading of evidence in view of the order Exhibit P-13?

(ii) Whether the suit can be dismissed on the basis of entries in the revenue record, although the Muslims were not the mortgagees in the year 1947, since the same stood redeemed in the year

> 1943 and Whether the Civil Court will have the jurisdiction to grant relief of possession on the basis of title?

Learned counsel for the appellant has vehemently argued that after the order of restitution was passed by the Collector on 3.8.1943, Exhibit P-14, the predecessors-in-interest of the plaintiffs deposited the due amount of Rs.44/8/-. The said payment was recorded in the order dated 28.8.1943, Exhibit P-13. A translated version of the said order reads as under:-

> "The amount of Rs.44/8/- by Dalip Singh, present applicant stands deposited. Receipt has been produced. Therefore, the land is ordered to be returned. The actual possession can be obtained by the applicant. The order is pronounced. 28.8.1943. Sd/- Collector."

The learned First Appellate Court refers to the order Exhibit P-13 in the judgment, but while returning findings, the learned First Appellate Court has failed to take into consideration the said document Exhibit P-13. The payment of Rs.44/8/- is reflected to have been made by the predecessor-in-interest of the plaintiffs in the aforesaid order. Therefore, the finding recorded that the order of restitution of the mortgage dated 3.8.1943 has never been executed, is based on misreading of evidence. Consequently, the finding of the learned First Appellate Court is not sustainable and the same is set-aside. Thus, the first substantial question of law is answered accordingly.

Both the Courts have relied upon the entries in the revenue record to hold that the land was rightly declared to be evacuee property.

However, the said findings based upon the entries in the revenue record alone suffer from patent illegality. It is well settled that the revenue entries are not the documents of title. The revenue entries are maintained for fiscal purposes only. In ***(Thakur) Nirman Singh and others versus Thakur Lal Rudra Partap Narain Singh and others, A.I.R.1926 Privy Council-100,*** it has been held to the followed effect:-

> "It is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind, as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid."

Subsequently, in ***Smt.Sawarni versus Smt.Inder Kaur and others, AIR-1996, Supreme Court-2823,*** it was held to the following effect:-

> " ..... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment. ....."

The said view was lateron reiterated in ***Balwant Singh and another versus Daulat Singh, AIR 1997 Supreme Court-2719 and Suman Verma versus Union of India and others, 2004 (12) Supreme Court Cases-58.*** Thus, the mere fact that the revenue entries reflecting mortgagees in possession will not be sufficient to treat the land as evacuee property. The failure of the revenue authorities to update the records or to incorporate order of redemption will not violate the orders passed. On the basis of the orders produced on record, the land was redeemed in the year 1943. Therefore, the entries in the revenue record will not confer any right in favour of the Central Government as the said land could not be declared as evacuee property since the mortgagees have no interest in the aforesaid property in the year 1947. The land is proved to be redeemed by the predecessor-in-interest of the plaintiffs, therefore, the plaintiffs are owners of the suit land. The mortgagees have no right, title or interest in the suit land as the land stands redeemed. The finding recorded by the learned First Appellate Court that the possession of the mortgagees recorded for a period of 12 years ripened in law into mortgagee rights, is untenable. Mere entries in the revenue record is not sufficient to declare the mortgagees as owners of the suit land. Consequently, the finding recorded by the learned Courts below that the land rightly declared as evacuee property on the basis of revenue record is clearly unsustainable and is, therefore, set-aside.

The learned counsel for the respondents has relied upon ***`Custodian Evacuee Property, Punjab and others versus Jafran Begum, AIR 1968-Supreme Court-169***, to contend that the Civil Court cannot entertain any suit or any question whether a particular property or right to

or interest therein is or is not evacuee property. In the aforesaid case, the house in dispute belongs to one Muradbux. His son Mohd.Rafiq migrated to Pakistan and a notice was issued under Section 7 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Act), to Dildar son of Mohd. Rafiq to show cause as to why the house be not declared as evacuee property. No notice was issued to Jafran Begum widow of Muradbux. After hearing Dildar, the Deputy Custodian declared the property as evacuee property as his father was migrated to Pakistan. Subsequently, Jafran Begum filed an application before the Custodian claiming that by virtue of a Will made in her favour by Muradbux in the year 1918, she is the owner of the entire property. The Custodian dismissed the said application. The proceedings under the Act by appeal, revision and review had attained finality, wherein it has been held that the widow is entitled to 1/8th share under the Mohammedan law. Thus, it has been found that 7/8th share of the house became evacuee property. Jafran Begum also filed a Civil Suit claiming permanent injunction against the Custodian and others barring them from evicting her from the house in dispute. The said suit was dismissed holding that the Civil Court has no jurisdiction to decide the matter in the face of Section 46 of the Act. In these circumstances, the Court found that the Act provides for determining of the property as evacuee property. In the said case, the land belongs to a Muslim. The dispute arose amongst his successors. The Court found that the order passed by the Custodian in discharge of quasi judicial function would specifically bar the jurisdiction of the Civil Court. However, in the present case, it has been found that the Muslims have no interest in the suit property since the same was redeemed in the year 1943.

Still further, it could not be pointed out that the land was declared evacuee property after giving notice to the present plaintiffs. Therefore, the order passed by the Custodian under the Administration of Evacuee Property Act, can not bar the jurisdiction of the Civil Court when the question of title is asserted by a non Muslim. Therefore, the bar of jurisdiction under Section 46 of the Act cannot be made applicable in respect of the present suit based on title. Thus, the second substantial question of law is also answered in favour of the plaintiff.

No other point is urged.

In view of the above, the present appeal is allowed. The judgment and decree passed by the Courts below are set-aside and the suit of the plaintiffs is decreed as prayed for with no order as to costs.

(HEMANT GUPTA)
JUDGE

May 2, 2007
**mohinder*